

Washington Law Review

Volume 26
Number 4 *Annual Meeting of the Washington
State Bar Association*

11-1-1951

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Recommended Citation

John N. Hazard, Far Eastern Section, *Soviet Socialism and Embezzlement*, 26 Wash. L. Rev. & St. B.J. 301 (1951).

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FAR EASTERN SECTION

SOVIET SOCIALISM AND EMBEZZLEMENT

JOHN N. HAZARD*

SOCIALISM has been heralded as the cure for crime. To the Marxist the claim seems reasonable. He believes that crime springs from poverty coupled with despair. Reorganization of the economic and social structure of society under socialism is promised as the route to hope and wealth. In consequence, socialism should create conditions under which the citizen will have no need to steal and no desire to kill.

To examine the effect of the thesis upon the writings of Soviet authors and the policy of the Soviet leaders this paper will review what has happened to the crime of embezzlement over the years in the U.S.S.R. Embezzlement ought to be a type of crime which one could expect to find influenced at an early stage in the development of a socialist economy such as that claimed by the Soviet Constitution for the Soviet Union.¹ Those convicted of embezzlement in capitalist countries have often explained their transgression in terms of need for money to meet unexpected sick bills or to speculate in the hope of gaining funds to meet a wife's claim for social distinction where money counts. Neither of these motives is on the list of those expected to be important to citizens living under conditions of socialism. What, then, has become of the crime of embezzlement in Soviet society?

The interest of Soviet legislators, courts, and authors in the crime of embezzlement has grown with the years. Recent decrees and court orders focus attention upon it. Authors link it with treason. Some of the highest penalties permitted by the criminal code apply to it. The constitution itself castigates it, by saying, "It is the duty of every citizen of the U.S.S.R. to safeguard and fortify public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of wealth and might of the country, as the source of the prosperity and culture of the working people. Persons committing

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¹ "Art. 1. The Union of Soviet Socialist Republics is a socialist state of workers and peasants." For a translation of the text of the constitution, with amendments to 1950, see J. H. Meisel and E. S. Kozera, *MATERIALS FOR THE STUDY OF THE SOVIET SYSTEM* (Ann Arbor, 1950), 242.

offenses against public, socialist property are enemies of the people."² In the Soviet lexicon there can be no greater condemnation.

The crime of embezzlement was not immediately defined in Soviet law after the revolution. Nevertheless, some elements of it found their way into the statutes, when efforts were made to control specific and narrow situations thought to endanger the state. Thus, a decree of 14(27) November, 1917, concerned "concealment of property."³ It declared former property owners and workmen, elected to supervise the physical transfer of nationalized property to the state, guilty of crime if they concealed any of the property in the process. Presumably the concealment was for the purpose of ultimate conversion, for it would have been pointless, otherwise. The next milestone is found in 1921, when a decree of June 1, 1921, was published concerning "theft" from state warehouses and the activity of warehouse officials aiding the "theft."⁴ Revolutionary, Military, and Transport Tribunals were authorized to try such cases without permitting counsel or witnesses to the accused. Capital punishment was set as the maximum penalty.

Not until promulgation of the first Criminal Code of the Russian Soviet Federated Socialist Republic did the crime of embezzlement receive a definition distinguishing it from larceny and lifting it out of the general category of "theft." This first Code, which became effective on June 1, 1922,⁵ included three articles on the subject of embezzlement. Two concerned the crime when committed by state officials, and the third concerned embezzlement by the private citizen.

The three articles defined the crime in these terms: Article 113 read, "Embezzlement by an official of money or other valuables,⁶ which are under his control by virtue of his official position, shall be punished by deprivation of liberty for a period of not less than one year and dismissal from the position." At the time of enactment, the penalty of imprisonment was limited to a maximum of ten years, so that the Code's article, in effect, established a penalty of from one to ten years for embezzlement by officials.

A second paragraph of Article 113 concerned special circumstances which were considered as making the crime more serious. This paragraph read, "Similar activities, committed by an official who is en-

² Art. 131.

³ SOB. UZAK., R.S.F.S.R., No. 3, Art. 35, sec. 10 (1917).

⁴ *Idem*, No. 49, Art. 262 (1921).

⁵ *Idem*, No. 15, Art. 153 (1922).

⁶ By decree of 10 July 1923, *Idem*, No. 48, Art. 479 (1923), the word "valuables" was altered to read "money, valuables, or other property."

trusted with special powers, or when embezzlement concerns especially important state valuables entails the penalties set forth in the second part of Article 106." An examination of the clause incorporated by reference indicates that the penalties which might be exacted extended from deprivation of liberty for a period of from three to ten years, on the one hand, to the supreme measure of punishment, shooting, in the event of aggravated circumstances of guilt, on the other hand.

The second article of the 1922 Code concerning embezzlement seems to have been only a cross reference. It was Article 186, and it read, "Embezzlement or misappropriation by an official of property which has been entrusted to him by virtue of his position shall be punished by application of the penalties provided in Article 113 of the Criminal Code." The article seems superfluous as adding nothing to the definition of the crime of embezzlement, although it may have been thought to be desirable as a means of emphasizing the fact that embezzlement by officials was a crime regardless of the ownership of the property embezzled. It was to make no difference whether the property belonged to the state or was owned by a private individual who had entrusted it to the official for some purpose relating to the official's duties.

An interpretation of Article 186 as a superfluous cross reference can be supported by subsequent legislative history, for it was stricken by the decree of July 10, 1923.⁷ A 1923 reprint of the Code removed the text of the article and replaced it by the words of the July 10, 1923, decree, namely, "Stricken, as having been subsumed in Article 113." A 1925 reprint of the Code reduced the annotation following the bare number of the old Article to the brief comment "Repealed." Repeal of Article 186 seems to have indicated no change in the definition of the crime, for the crime of embezzlement by an official continued to relate to appropriation of both state and privately owned property entrusted to an official by virtue of his position.

The third pertinent article of the 1922 Code indicated clearly that the government was concerned more with embezzlement by officials than with embezzlement by private persons. The article, numbered 185, concerned the latter and provided a milder penalty than those prescribed for embezzling officials. It read, "Embezzlement, i.e. the unwarranted retention from mercenary motives, and also the misappropriation of property entrusted for a specific purpose, when committed by a private person shall be punished by involuntary labor

⁷ *Ibid.*

without deprivation of freedom for a period up to six months, or deprivation of freedom for a period not exceeding six months." It has been explained by Soviet authors that a distinction is to be drawn between keeping property for one's own use, on the one hand, and sale of the property and appropriation of the proceeds, on the other. The distinction takes form in two different Russian words for the two types of conversion. Since no difference is drawn between the two types in terms of penalties, and since no such distinction is drawn under the usual American statute, both types of conversion will be termed "embezzlement" in this study.

The giving of precise definition to the crime of embezzlement and the campaign conducted against those who committed it seems to have had little effect in dissuading potential offenders in the years immediately following the adoption of the 1922 Code. Criminologists reported that the number of convictions for embezzlement increased almost five times in the four years following the adoption of the Code.⁸ If the year 1922 be taken as the base, the year 1923 was marked with a decrease in embezzlement, for the total number of such crimes was only 89 per cent of the figure for the preceding year. Then the incidence of the crime began to rise. In 1924 it was 139 per cent of the total for 1922; in 1925 it vaulted to 375 per cent of the base year, and in 1926 it reached the high figure of 491 per cent of the total for the year in which the crime had first been defined specifically in the Code. It is said that the crime of embezzlement had been the most common of all crimes committed by officials, amounting to 54 per cent of all such crimes in 1924, but the amounts involved were reported as small: not more than 100 rubles in 41.3 per cent of the cases; from 100 to 500 rubles in 38 per cent of the cases; from 500 to 1500 rubles in 10.4 per cent of the cases and only four cases involving over 1500 rubles.⁹

A new Criminal Code replaced the old one on January 1, 1927.¹⁰ Its Articles 116 and 168 left the definition of embezzlement and the distinction between the crime when committed by officials and private

⁸ See B. S. Utevskii, *OBSHCHEE UCHENIE O DOLZHNOSTNYKH PRESTUPLENIYAKH* [A General Study of Crimes Committed by Officials] (Moscow, 1948), 265.

⁹ The table must have omitted some data, for if the percentages are totaled, it will be seen that the top bracket should have constituted 10.3 per cent of the total. If there were really only four cases in the top bracket, as claimed, it would indicate that the total number of convictions for embezzlement in 1924 throughout the entire R.S.F.S.R. was only a little over 40. This would seem to have been too low a figure to have excited the continuing attention given to the crime.

¹⁰ *SOB. UZAK.*, R.S.F.S.R., No. 80, Art. 600 (1927).

persons much as it had been in the earlier code. The group to be blanketed under the title of "official" was expanded by adding the words "or by any person performing any duty whatever under the orders of a state or public agency." This clause, apparently, was designed to reach the person assigned to a specific task for the state without having been put into the civil service as a responsible official. Further, the penalty provisions were changed to reduce the penalties. The crime of embezzlement without aggravating circumstances was to be punished by "deprivation of liberty for a period up to three years," rather than the term of from one to ten years permitted by the 1922 Code. The penalty for the crime in its aggravated form was kept severe, but it was altered slightly in wording to read, "deprivation of freedom with solitary confinement for a period of not less than two years, with an increase in the penalty up to shooting, with confiscation of property."

Article 168 in the new Code, relating to embezzlement by private persons, was changed very little in wording and not at all in the definition of the crime. The principal change was to increase the penalty from the prior six months maximum to a maximum of two years' deprivation of freedom. A new paragraph was added to cover misappropriation by finders.¹¹

Retention of capital punishment as the maximum penalty for embezzlement in aggravated form by officials was shortlived after the introduction of the new code on January 1, 1927. By decree of October 31, 1927, the provision for solitary confinement or shooting was removed.¹² In its place the maximum penalty for embezzlement in aggravated form by officials was left at the relatively mild level of "deprivation of freedom for a period of not less than two years, with confiscation of property." This wording would permit imprisonment for a period up to ten years under the general penalty provisions of the code. Although such a penalty was severe, it was considerably less than capital punishment.

The reduction in maximum possible penalties in October, 1927, is remarkable because of an event during the year. On March 16, 1927, the Council of People's Commissars of the R.S.F.S.R. took account of the serious social danger to be found in embezzlement,

¹¹ Under Soviet law a finder is obligated to deliver the found article to appropriate authorities. If unclaimed, it becomes the property of the state. See CIVIL CODE, R.S.F.S.R., Art. 68 (d).

¹² SOB. UZAK, R.S.F.S.R., No. 110, Art. 737 (1927).

and ordered the People's Commissariats of Justice and Internal Affairs "to continue the strictest attention to preserving criminal repression of this type of crime, permitting conditional sentences and palliative measures of social defense only in exceptional situations when the conditions anticipated in the criminal code were present without question, and also to narrow the application of release on parole of persons convicted of embezzlement and lack of managerial care in their work."¹³

The reduction of the penalty for embezzlement in the face of what appears to have been continuing concern over the incidence of the crime may have reflected the feeling of those in positions of leadership at the time. It must not be forgotten that the Communist Party had stood in its program of 1919 for a policy of re-education and rehabilitation of criminals rather than their destruction. The plank of the program, which, incidentally has never been withdrawn, reads, "Constructed on such a basis, the courts of justice have already led to a fundamental alteration of the character of punishment, introducing conditional sentences on a wide scale, applying public censure as a form of punishment by involuntary labor without deprivation of freedom, and prisons by institutions for training, and applying the principle of comradely tribunals."¹⁴

The Communist Party program reflected the opinion that with the progress of the state toward an economy of abundance eliminating poverty, and toward an enlightened citizenry which understood social duty, the number of offenders would be reduced. Only those few who were in need of medical treatment or who simply did not understand their social obligations were expected to require tutoring or medical care to take their place in an orderly society. The policy took concrete form in some frequently described labor camps, such as that of *Bolshevo* near Moscow in which was filmed the internationally famous picture, *The Road to Life*, depicting the work done with juvenile delinquents in re-educating them to become useful citizens. The approach of *Bolshevo* is even today still being applied in certain situations.

With such an attitude toward the desiderata of an effective penology, it may not be surprising that although the incidence of embezzlement was still high in the late 1920's, there were those in power who ex-

¹³ See B. S. Uteveskii, *op. cit.*, *supra*, note 8 at 267.

¹⁴ For text of program see J. H. Meisel and E. S. Kozera, *op. cit.*, *supra*, note 1 at 110.

pected it to fall within a few years. They believed that with improving economic conditions brought about by the five year plans, which were then being introduced, and the expectation of stability in government with reduced fear of revolution, it was time to put emphasis upon rehabilitation and to remove as a penalty capital punishment.

The reduction in penalty was relatively short lived. Some hint that the government was losing patience with embezzlers was given by the All Union Central Executive Committee, the principal source of legislation at the time, on March 2, 1928. There was issued an order, entitled "Concerning punitive policy and the condition of places of detention." It recognized the necessity of applying severe repressive measures to especially dangerous criminals, and it included embezzlers, bribe takers and thieves along with bandits, arsonists and horse thieves.¹⁵

In the early 1930's the campaign for collectivization of agriculture began. The world knows of the severe opposition that developed on the part of many of the peasants, and of the measures taken to "liquidate" as a class the wealthier peasant elements, so as to halt the opposition. From what can be learned even those who entered the cooperative associations which were to till the farms were hardly appreciative of their new duties. Mass theft of cooperative property occurred. To meet the issue the government issued one of the decrees which has been familiar to large numbers of Soviet citizens by the date of its enactment, namely, August 7, 1932.¹⁶

The decree of August 7, 1932, appeared to apply to rather narrow sets of facts: theft from transport, and theft of cooperatively owned property. It established as a maximum penalty capital punishment. On this base, the application of the decree started, but it spread well beyond the provisions of the decree. It opened with a preamble which declared that there had been complaints against theft of goods from railway and water transport and theft of cooperative and collective farm property. Then it stated that the Central Executive Committee and the Council of People's Commissars "consider that public property (state, collective farm, cooperative) is the basis of the soviet structure; it is sacred and inviolable, and persons who commit offenses against public property must be considered as enemies of the people, in view of which a decisive struggle with thieves of public property is the first duty of agencies of Soviet authority." In this preamble

¹⁵ See B. S. Utevkii, *op. cit.*, *supra*, note 8 at 267.

¹⁶ SOB. ZAK., S.S.S.R., No. 62, Art. 360 (1932).

the leaders adopted language to be used later in the 1936 Constitution in classifying thieves of public property as enemies of the people. They also restated the attitude toward public property which had been fundamental since the revolution, and which four years later was to be elevated to the level of the Constitution itself.¹⁷

Following the preamble came the operative provisions. The decree declared freight on railway and water transport to be equivalent in significance to state property and ordered its increased protection; it introduced as a penalty for theft of freight capital punishment and confiscation of property; it set as the penalty for such theft under mitigating circumstances deprivation of freedom for not less than ten years with confiscation of property; it provided that no amnesty (of which the Soviet Government has had several) should apply to persons convicted of theft of freight from transport. In its Chapter II it made collective farm and cooperative property the equivalent of state property in significance; it established the same penalties for theft of cooperative property as were provided in Chapter I for theft of freight, and it included the same provision of amnesty. A Chapter III made the action of wealthy peasants (*kulaks*), who used threats to persuade collective farmers to withdraw from collective farms, equivalent to crimes against the state and provided that the penalty for such action should be deprivation of freedom for a period of from five to ten years with "internment in a concentration camp." It closed with a prohibition of amnesty on such offences as well.

Although rather narrowly concerning property crimes in general the law of August 7, 1932, has been applied widely. A 1947 Soviet author has written, "It must be borne in mind that embezzlement and misappropriation by officials, when an especially large property damage is caused, may be classified under the law of August 7, 1932."¹⁸ Even shortly after the publication of the law, a commentator on the law was able to say, "At the present time the principal method of struggle by the class enemy is the machinations of theft: pilfering, waste and other means of undermining socialist property (see speech of Comrade Stalin at the January Plenum of the Central Committee

¹⁷ Art. 4. The economic foundation of the U.S.S.R. is the socialist system of economy and the socialist ownership of the instruments and means of production, firmly established as a result of the liquidation of the capitalist system of economy, the abolition of private ownership of the instruments of production, and the elimination of exploitation of man by man.

¹⁸ I. P. Golyakov, editor, *UGOLOVNOE PRAVO* [Criminal Law; Text Book for Juridical Schools] (Moscow, 1947), 258.

and Central Control Commission 1933). Therefore infringement of socialist property is without doubt a state crime."¹⁹

The record completely supports the conclusion that all types of theft, including embezzlement, were placed within the provisions of the severe law of August 7, 1932. Yet there was an attempt to avoid its misapplication by overly zealous courts, who had little in the text of the law itself to guide them in expanding its application. In November, 1932, the People's Commissariat of Justice of the R.S.F.S.R. issued a directive saying that it was a misapplication of the law to apply it in cases in which there was inadequate evidence; in giving it retroactive effect when the political significance of the case and the expediency of the situation did not require it; and in applying it to working class people in cases of unimportance.²⁰

A more detailed instruction followed on February 14, 1933, from the same source.²¹ It said, in part, "In order to give the courts the opportunity to approach each concrete case in a manner which is not formal, and to reduce the severity of repression in cases of clear inexpediency, courts may apply measures of repression within the limits set by the Criminal Code of the R.S.F.S.R., i.e., classify given cases under paragraph (d) of Article 162²² of the Criminal Code by analogy, to cases when small nonrecurring thefts have occurred, and have been committed by working class people because of need, or failure to understand, or in other such circumstances. In such application of Article 162 (d), however, it must be a situation in which there are not present the complicating circumstances set forth in the second paragraph (the application of technical means or as the result of conspiracy, or repeatedly, or by persons having special access) or likewise under paragraph (e) when there are not present the circumstances set forth in the second part (the application of technical measures, repeated or through a conspiracy)." Then the directive stated that the law of August 7 must be applied in all cases of theft committed by class enemy elements, by groups, if repetitive, and even in the event of a single act, if the amount involved was important.

¹⁹ See D. Karnitskii, G. Roginskii, *UGOLOVNYI KODEKS R.S.F.S.R.* [Criminal Code, R.S.F.S.R. With Commentaries] (Moscow, 1935), 67.

²⁰ See *Idem* at 69.

²¹ See *Idem* at 70.

²² Art. 162 (d). "Covert theft of the property of another (larceny) entails: when committed in state or public warehouses and storage depots by persons having special access or guarding them, by means of burglary tools or repeatedly, or in conspiracy with others, and also every theft of especially large amounts from such warehouses and storage depots—deprivation of freedom for a period up to five years."

Another instruction issued from the Commissariat of Justice on May 8, 1933,²³ restating the task of the courts as being "the strictest application of the law of August 7, 1932, and the severest measures of repression to class enemies and hostile class elements, to thieves and embezzlers of socialist (public) property" and also in mobilizing on the basis of court trials the broad masses of workers and collective farmers in the struggle to protect socialist (public) property in order "to create that moral atmosphere among the workers and peasants which would exclude any possibility of theft," and to champion the establishment of a system of protection and inventory which would exclude the possibility of theft of socialist property.

By this last instruction, the Commissariat of Justice repeated its faith in the ultimate elimination of crime, if only the working people could be brought to understand their duties in a socialist society. The Commissariat showed also its feeling that hostile class elements were beyond rehabilitation, and urged their elimination through the severest measures, which were capital punishment. Yet even the working elements were not excluded from the severe penalties in some instances. Subsequent orders from the Commissariat stated that when the regular articles of the criminal code were applied to small thefts committed by working class elements, this must not be done to the "political perversion" of the law of August 7, 1932, especially during harvest time and when the thefts occurred during the delivery of grain to the state.

The Supreme Courts of the U.S.S.R. and of the R.S.F.S.R. also spoke on the application of the law of August 7, 1932. The U.S.S.R. Supreme Court issued an order on November 15, 1932,²⁴ to the effect that the law of August 7, 1932, was to be applied to thefts which took place in the State Workers' Savings Banks, whether committed by officials or private persons. Another Court order, coming from the Supreme Court of the R.S.F.S.R. on May 28, 1933,²⁵ attempted to restrict the application of the law, as the Commissariat of Justice had done, by saying "The severity of court repression under the law of August 7, 1932, shall be directed not against individual cases of unimportant embezzlement and theft, committed notably because of need, but to cases of large scale, malicious and organized theft and embezzlement." The Court ordered, further, that officials of the

²³ See D. Karnitskii and G. Roginskii, *op. cit.*, *supra*, note 19 at 70.

²⁴ See Annotation to Criminal Code, R.S.F.S.R. (1938 edition), 141.

²⁵ See *Idem* at 139.

accounting department and clerks in the administration of the co-operatives' central agencies who failed to take necessary measures to prevent embezzlement and theft should be prosecuted without fail under Article 109 of the Criminal Code relating to general crimes by officials.

Large scale embezzlement during the period of the early thirties is said to have been committed usually by hostile class elements.²⁶ An author cites the cases arising between October 1, 1932, and October 1, 1933, in the North Caucasus Province. He says that one defendant was a senior bookkeeper in the State Bank, who together with a departmental consultant embezzled 18,000 rubles. It was discovered that the bookkeeper had a brother who had been an officer in the White Armies opposing the revolution and was now an émigré outside the U.S.S.R. The consultant had been convicted on a previous occasion. The defendant in another case who was a selling agent for a cooperative society embezzled 6,600 rubles. He is said to have been formerly an active counterrevolutionary. A third defendant who was a bookkeeper on a collective farm, from which he embezzled 20,000 rubles, is reported as having been the son of a former merchant.

Whether this explanation of the character of embezzlers is based upon representative evidence or not, it may indicate the type of thinking being done on the subject and explain the increase in severity of treatment of embezzlers after 1932. The trend toward the type of penalty envisaged by the Communist Party program of 1919 was reversed, although there was still expressed hope that the working elements themselves would be brought to understand their duties if proper measures were used by the courts and the agencies of justice. A lengthy instruction of the Commissariat of Justice in 1932 criticized the preliminary investigators of cases involving crimes under the law of August 7, 1932, and indicated that 30 per cent of the cases coming before the appellate college of the Supreme Court of the R.S.F.S.R. were being reversed because of inadequate preliminary investigation. The investigators were advised that the law of August 7, 1932, established severe measures of repression, and that therefore it was especially important to establish that theft of socialist property had actually occurred before prosecution was begun.²⁷ It is apparent that the Commissariat was worried about the effect of faulty conviction

²⁶ See B. S. Utevkii, *op. cit.*, *supra*, note 8 at 271.

²⁷ See *SBORNIK TSIRKULYAROV I RAZYASNENII NARODNOGO KOMMISSARIATA YUSTITSIIA R.S.F.S.R.* [Collection of Circulars and Explanations of the People's Commissariat of Justice of the R.S.F.S.R.] (Moscow, 1934), 235-7.

tions upon the populace, in that the educational value of criminal prosecution was lost when the public felt it unjust.

No statistical tables have come to the writer's attention covering the incidence of embezzlement during the 1930's or 1940's. Some clue as to its continuing importance is to be found in such places as an instruction of the Office of the Prosecutor of the U.S.S.R. Under date of May 5, 1936, the Prosecutor stated that he had much information on a large number of embezzlements and thefts from agencies of voluntary public organizations.²⁸ He cited the instance of *Osoviakhim*, which was a mass organization collecting funds for military preparedness and using for the purpose the sale of lottery coupons. The circular says that in 1935 alone there were taken from *Osoviakhim* by embezzlement or theft 1,750,000 rubles. It criticizes the work of the prosecutors and declares that during 1935 there were 518 indictments for embezzlement or theft within the *Osoviakhim*, but that conviction of only thirty-nine persons resulted. It is noted that special growth of these offenses is found in the Tadzhik Republic, the Karakalpak Autonomous Republic, the Tartar Autonomous Republic, and the Provinces of Kuibyshev, Stalingrad, Gorki, Ivanov and Azov-Black Sea.

Some judicial decisions indicate the types of problems met by the court. An early one, before enactment of the law of August 7, 1932, concerned the status of a defendant. The question was posed as to whether he was an official within the meaning of the code or subject to the penalties of Article 168 as a private citizen. The defendant was accused of misappropriating funds which he received from carpenters whom he claimed as members of a carpenters' cooperative of which he said he was president. The court found that the cooperative had not been formed in accordance with law and had not been registered, so that he could not be considered as an official. His offense was under Article 168, as embezzlement by a private citizen.²⁹

Three cases reported in 1940 concerned the application of the law of August 7, 1932. In the first, arising in the Uzbek Republic, the defendant had been cashier during the years 1937-1938 in a state farm raising vegetables. By means of forgery of the cashier's records he embezzled 1088 rubles. He was a member of the Komsomols

²⁸ See SBORNIK TSIRKULYAROV I RAZYASNENII PROKURATURY SOYUZA S.S.R. (sostavili B. I. Solers and D. I. Orlov. Pod. red. A. Y. Vyshinskogo [Collection of Circulars and Explanations of the Prosecutor's Office of the U.S.S.R.] (Moscow, 1936), 98.

²⁹ SUDEBNAYA PRAKTIKA, R.S.F.S.R., No. 7, p. 10 (1929).

(Communist Youth League). The court of original jurisdiction convicted him of embezzlement and sentenced him under the provisions of the Uzbek Criminal Code to six months' involuntary work without loss of freedom, and ordered that 10 per cent of his wages be withheld during that period. The Supreme Court of the Uzbek Republic affirmed the decision in principle but changed the penalty slightly. On review of the case following the protest of the President of the Supreme Court of the U.S.S.R., the appellate college of the latter court set aside the sentence of the first court, and the affirmance of the Republic Supreme Court on the ground that it was too mild and did not assure continuation of a vigorous struggle with those who were stealing socialist property.³⁰

The case of a railway ticket agent brought forth an order of the full Supreme Court of the U.S.S.R., dated July 25, 1940. The record brought before the Supreme Court for review indicated that the agent had embezzled 36,000 rubles by not reporting over a period of years all of his ticket sales. The Supreme Court held that because of the systematic character of the crime and the continuation of the activity over a period of years, the offense should have been classified under the law of August 7, 1932, and not under the regular articles of the Criminal Code. The case was sent back for retrial, but with instructions that the defendant be detained awaiting the outcome of the trial.³¹

A cashier of a factory called upon to accept and record contributions to the U.S.S.R. defense fund during the last war was not placed, however, under the law of August 7, 1932, when he embezzled 2,791 rubles from the fund. He was tried and convicted under Art. 116, part 2, but the Supreme Court of the Republic decided that the crime fell under part 1 of the article. The Supreme Court of the U.S.S.R. held that the original conviction under part 2 of the Article was correct, since the embezzled funds had been collected by the members of the militarized protective group in the factory for the purpose of the U.S.S.R. defense fund and therefore constituted especially important state valuables.³² Nothing was said as to the applicability of the law of August 7, 1932.

The increased severity of the laws has been thought, apparently, to

³⁰ SOVETSKAYA YUSTITSIYA, No. 21, 1940, p. 43.

³¹ See I. P. Golyakov, *op. cit.*, *supra*, note 18, at 258.

³² See Sbornik Postanovlenii Plenuma i Opredelelenii Kollegii Verkhshuda S.S.S.R. [Collection of Orders and Decisions of the Colleges of the Supreme Court of the U.S.S.R.] (Moscow, 1942), 60.

require some explanation to the public. One author explains the matter in the following terms. "While Soviet legislation during the years of its development made more precise the elements of crime committed by officials, and introduced some new crimes, this was done not because there was being created a policy of increased repression for crimes committed by officials nor because the number of such crimes had increased, but because the opportunity had been established increasingly with the passage of time of raising the requirements and increasing the personal responsibility of the staffs of state offices and enterprises."³³ The same author reports that beginning with 1933 the number of crimes by officials began to drop, and by 1937 the number was 50.1 per cent less than it had been in the year 1935.

With the war the incidence of crime increased, as evidenced by commentaries reviewing the situation. An author states that many more activities were classed under the law of August 7, 1932, than under the regular articles of the Criminal Code because of embezzlement by officials and delivery of state property to speculators to sell on the black market. It is indicated further that the value of the property embezzled or stolen need not have been as high as in peacetime to bring a case under the law of August 7, 1932.³⁴ The People's Commissariat of Justice of the U.S.S.R. issued a letter on August 10, 1943, stating that officials found guilty of supplying speculators with goods for resale were to be held responsible under the law of August 7, 1932, or the corresponding articles of the Criminal Code.³⁵ More cases of small officials were put under the provisions of part 2 of Art. 116 than would have been the case in peacetime in interpreting what was meant by persons entrusted with special powers. Also the value required to place the case under the class of particularly important valuables was reduced to bring more cases within the severe part of the Code's Article 116.³⁶

Precise application of the provisions of the statute was, apparently, not lost sight of in this general extension of the applicability of the embezzlement provisions to situations which would not have merited the severest penalties in peacetime. The Supreme Court of the U.S.S.R. set aside in 1945 a conviction of a defendant in Leningrad under part 1 of Art. 168 for embezzlement of the belongings of the

³³ See B. S. Utevsii, *op. cit.*, *supra*, note 8 at 279.

³⁴ See *Idem* at 285.

³⁵ See *Idem* at 285.

³⁶ See *Idem* at 288.

owner of an apartment into which the defendant had been placed by the proper authorities after the evacuation of the owner. The property consisted of a sideboard, writing desk, clothing and some other housekeeping articles. The Supreme Court found in the record that the new tenant had sent a request to the Leningrad Provincial Soviet on arrival in the apartment asking that he might be permitted to keep the items in the apartment for his own use. This seemed to the Supreme Court to be evidence of his lack of intent to appropriate the articles illegally, and so the court ordered the case terminated.⁸⁷

Likewise a conviction under the law of August 7, 1932, was set aside because intent to appropriate as one's own was absent in the following case. The Director of a Labor Reserve School had been tried for attempting to embezzle 30,448 rubles belonging to the school during its evacuation from Kiev to Saratov. The record showed that the Director was informed by the Provincial head of the Reserve Schools that the school which he directed would be disbanded. The defendant was not in accord with the decision to disband the school, and so he refused to deliver to the Provincial Head all of the property, keeping a part of it in the railway car evacuating the school. He also refused to deliver 17,000 rubles belonging to the school. The property was delivered to the Provincial Head only after insistent demands. The court found that the case did not constitute the crime of embezzlement under the law of August 7, 1932, but the crime of abuse of official authority. There had been no conversion. The penalty was set at three years' deprivation of freedom.⁸⁸

The death penalty for all crimes in peacetime was abolished by decree of May 26, 1947,⁸⁹ which declared in its preamble that this major step had been possible because of the growing might of the Soviet state as evidenced by the defeat of the enemy and also by "the exceptional devotion to the Soviet Motherland and to the Soviet government of the entire population of the Soviet Union." Further, it was said in the preamble that with the capitulation of Germany and Japan it was indicated that peace might be considered guaranteed for an extended time. In place of the death penalty there was established the penalty of internment in a correctional labor camp for a period of twenty-five years.

The penalties under the law of August 7, 1932, were immediately

⁸⁷ See *Sudebnaya Praktika Verkhshuda S.S.S.R.*, Vypusk VII, p. 10 (1945).

⁸⁸ See *Sbornik, cit. supra*, note 32 at 59.

⁸⁹ *VEDOMOSTI VERKHOVNOGO SOVETA S.S.S.R.*, No. 17 (471), 31 May 1947.

affected because shooting was no longer to be permitted for any offense, and the law of August 7, 1932, permitted shooting. The occasion, apparently, was seized to rework all of the legislation on embezzlement and larceny of public and private property, for within a few days, on June 4, 1947, two decrees were issued, one dealing with socialist property and the other with private property.⁴⁰ The decree concerning protection of private property redefined penalties only for larceny and robbery. Nothing was said of embezzlement, and it has been indicated since that the provisions of Article 168 of the Criminal Code remain in force for cases of embezzlement of private property. Since this paper is concerned only with embezzlement, it is necessary, therefore, in determining the effect of the new decree to examine only the provisions relating to state and public property. The principal article states "Larceny, misappropriation, embezzlement or other theft of state property shall be punished by internment in a correctional labor camp for a period of from seven to ten years with or without confiscation of property." A second article permits an increase in penalty when the crime is repeated a second time, or is conducted by a group or on a large scale. For such activity the penalty may be internment in a correctional labor camp for a period from ten to twenty-five years with confiscation of property.

Collective farm, cooperative and other public property is protected by the third and fourth articles providing for internment in a correctional labor camp for a period of from five to eight years with or without confiscation of property, the penalty to be raised to a period of from eight to twenty years with confiscation of property if the crime has been repeated or is committed by a group or on a large scale. A final article makes failure to report to state authorities theft of state or public property, known to have been in preparation or to have been committed, subject to a penalty of deprivation of freedom for a period of from two to three years or banishment from populated centers for a period of from five to seven years.

Some difficulty arose soon after the new decree as to the effective date with relation to the old law of August 7, 1932. The Plenum of the Supreme Court of the U.S.S.R. issued an order, at the request of the Ministry of Justice on August 22, 1947, saying, "Crimes provided for by the decrees of June 4, 1947, which are committed after publication of the decrees shall be classified under the appropriate

⁴⁰ *Idem*, No. 19 (473), 11 June 1947.

section of the decrees. In view of this the following shall no longer be applied: the law of August 7, 1932, section 1 of the decree of July 10, 1940, and Articles 59³⁸, 116, 162, 165, 166, 166-a, 167 and part 2 of 169 of the Criminal Code of the R.S.F.S.R., and equivalent articles of the Criminal Codes of the other Union Republics."⁴¹

Practice under the new decree on embezzlement is reviewed in a recent study.⁴² It is explained that most of the cases coming before the courts under the decree of June 4, 1947, have arisen because the person who converted the property did so not for his own use but to transfer it to a relative or friend. A case is recounted in which a railway stationmaster, wishing to aid a woman with whose husband the station master had long worked, dispatched to her a carload of lumber belonging to a state enterprise. He altered the documents in order to conceal the crime. The Plenum of the Supreme Court declared, "Lebedev, misusing his official position, illegally converted one carload of lumber to his own use and directed it to his friend Skvortsova."⁴³ Upon this and other cases the author reaches the conclusion that "theft of socialist property is any intentional illegal appropriation in any form and by any means of any state or public property."⁴⁴

Under the provisions of the decree of June 4, 1947, it seems that the distinction between embezzlement and other forms of taking is being obscured, at least when the subject matter is state property. All are now combined as "theft" (*Khishchenie*), and the penalty is the same for all although judges are admonished to take many factors into consideration in making the penalty fit the danger of each specific situation.⁴⁵ Only when the subject is private property is there still a distinction in the definition of the types of "theft." Only then is embezzlement treated as an offense of an independent character.

On January 12, 1950,⁴⁶ the death penalty was restored to Soviet

⁴¹ See annotation to Criminal Code, R.S.F.S.R. (1950 edition), pp. 145-6.

⁴² See A. N. Vasiliev, *O Ponyatii Khishcheniya Sotsialisticheskogo Sobstvennosti* [On the meaning to be given theft of socialist property] *SOVETSKOE GOSUDARSTVO I PRAVO*, No. 2, p. 33 (1951).

⁴³ *Idem* at 34.

⁴⁴ *Idem* at 35.

⁴⁵ To the effect that even though the decree of 4 June 1947 makes no distinction between officials and private persons who steal socialist property, such a distinction as well as other considerations should be taken into account by courts in deciding upon an appropriate sentence, see Z. A. Vyshinskaya, *Ob UGOLOVNOI OTVETSTVENNOSTI ZA KHISHCHENIE GOSUDARSTVENNOGO I OBNCHESTVENNOGO IMUSHESTVA* [On Criminal Responsibility for Theft of State and Public Property] (Moscow, 1948), 17.

⁴⁶ *VEDOMOSTI VERKHOVNOGO SOVETA S.S.S.R.*, No. 3 (618), 20 January 1950, p. 1.

law "for traitors, spies, and those seeking to undermine the state." There has been nothing yet to indicate that this restores the death penalty for theft of state property, by embezzlement or otherwise, and the provisions of the decree of June 4, 1947, still appear to be applicable. Except for Stalin's statement that those who steal state property are enemies of the people and equivalent to traitors, there is no immediate link between theft of state property and the restored policy of capital punishment in cases of special danger to the state. It is quite possible that if it were found that embezzlement or other taking of state property had been conducted for the express purpose of attempting to undermine the state rather than to improve the individual's material condition, the provisions of the criminal code relating to counterrevolutionary activity would be applied, and the death penalty would be meted out. To date there have been no reports of this kind of action.

The evidence indicates that crime continues in the U.S.S.R., even in the field of embezzlement. This field might have been thought to be one of the areas in which improved conditions would lessen crime, since embezzlement was early associated with poverty and unemployment by Soviet writers who held that neither could be extant under conditions of Soviet socialism. Further, it seems that Soviet leaders have become impatient with those who commit crime and are now prepared to permit application of penalties of imprisonment of such length that rehabilitation in normal course would seem not to be expected. What do Soviet writers say to explain this situation which was hardly anticipated in the early literature?

Explanation of the continuance of crime under Soviet socialism is given in these words, "And if we still have crimes, the reason is to be found in the capitalist encirclement, and in the presence of the relics of capitalism in the minds of men. . . . The relics of capitalism in the minds of men are the principal reason giving rise to such crimes as theft of socialist property, theft of the personal property of citizens, murder, speculation, rowdyism, etc. . . . In the U.S.S.R. all of the conditions necessary to the conquest of the relics of capitalism in the minds of men exist. . . . Nevertheless, one cannot limit oneself to methods of convincing, explaining and demonstrating in the struggle to conquer the relics of capitalism in the minds of men, in the struggle for communist education of the mass. Measures of compulsion play a substantial role in this business. These measures

are applied by the Soviet court on the basis of Soviet law. . . . Soviet law struggles with the relics of capitalism in the minds of men, isolating and re-educating those who retain these relics."⁴⁷

Here in summary is a restatement of faith in the ultimate conquering of crime by socialism, but only if and when a much larger part of the world is under the Soviet system so that there is no capitalist environment outside the Soviet system and after sufficient time has elapsed to eliminate capitalist relics from the minds of men. Meanwhile isolation and re-education of offenders is called for. The offenders themselves are no longer pitied for their poverty or their ignorance. More is expected of them, and for that reason penalties can be severe without upsetting those who originally called for a penology of rehabilitation.

The approach indicated by Soviet literature and practice in the courts was confirmed recently by the report of a British barrister who made one of his periodical trips to the U.S.S.R. and talked to Soviet law authorities. His investigation included a visit to a labor camp. He has written of his experience, "The 'labour-corrective camp' was particularly interesting. The attitude of the Government to criminals has quite naturally changed through the years. Twenty or even fifteen years ago, the view that crime was a product of bad social conditions led to great leniency in the treatment of criminals; but today, with crime in fact diminishing rapidly in volume, the view prevails that social conditions offer far less temptation to crime and therefore less excuse for it, and accordingly those who commit crimes in a country where so much is done to improve the lot of citizens should be more sternly punished." He then proceeds to describe the conditions he found in the camp visited, and finds them "hard but administered with great humanity" and in the manner best calculated to fit the men and women in it to return to free life as normal citizens."⁴⁸

If this testimony of a sympathetic witness be based on correct observation and reporting, and there is much in the literature to support it, some criminals, at least, are being subjected to a course of rehabilitation, but the leadership believes that they deserve less

⁴⁷ See B. M. Chkhivadze, *Rol Sovetskogo Suda v borbe za preodolenie perezhitkov kapitalizma v soznanii lyudei* [The Role of the Soviet Court in Overcoming the Relics of Capitalism in the Minds of Men] SOVETSKOE GOSUDARSTVO I PRAVO, No. 2, p. 17 (1949).

⁴⁸ See D. N. Pritt, K.C., *Soviet Notebook 1950*, 11 ANGLO SOVIET JOURNAL, No. 4 (Winter 1950-1951), 27 at 31.

consideration than the criminals of two decades ago. Soviet authors state that socialism has given the opportunity, but that the erring individual has not made use of this opportunity. By such a device the social and economic order of Soviet socialism is given another chance, and socialism is not condemned for failure to eradicate crime. Those remaining to be blamed are the imperfect people who live under this kind of socialism, for they are said to be in some measure slaves to their past. They are thought not alone to blame, however, but subverted by those who guide peoples within the countries of the capitalist encirclement and who use their radio and other means of propaganda to arouse unrest among Soviet peoples. The instigator of crime in the U.S.S.R. has thus become, in some measure, the foreign devil.